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# CRS Report for Congress

## China-U.S. Relations and Most-Favored Nation Status: Issues and Options for Congress

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## **CHINA-U.S. RELATIONS AND MOST-FAVORED NATION STATUS: ISSUES AND OPTIONS FOR CONGRESS**

### **SUMMARY**

Debate on the President's annual June request to extend most-favored-nation (MFN) status to China is more controversial in 1991 than at any time since China first received this status in 1980. The controversy is more heated this year in major part because of the U.S. perception that, despite ongoing U.S. sanctions, post-Tiananmen authorities in Beijing has made little progress on human rights and few concessions on other major policy issues. But broader policy trends and developments are also fueling the 1991 debate.

Developments in the Soviet Union and Eastern Europe have changed the original U.S. policy calculus that close relations with China were essential to offsetting Soviet Bloc strength. As a consequence, China has become relatively less important in U.S. security considerations. This has permitted other contentious issues, including issues involving human rights abuses, predatory trade practices, and missile proliferation concerns, to become more important in U.S. policy considerations. In addition, the ongoing struggle between the Legislative and Executive branches over the role that each plays in setting the direction for U.S. foreign policy has sharpened the debate on all aspects of U.S. policy toward China. In particular, Congress has been frustrated by the President's overwhelming ability to successfully dominate U.S. decisions on China. In addition to individual issues of concern in U.S.-China relations, the debate on China's MFN status has become a vehicle in 1991 for this larger policy struggle.

Given the dominance of the Executive Branch on China questions, the opportunity for congressional action on the President's 1991 request for extending China's MFN status provides Congress with an opportunity to expand its influence over U.S. China policy. For many Members, a significant factor in deciding whether to extend MFN status for China will involve a judgment of how that vote will affect the sensitivity of the Executive Branch to congressional concerns about the entire range of U.S.-China relations. In addition, Members will have to consider the political and economic consequences of withdrawing or conditioning China's MFN status, including the consequences for: U.S.-China relations, China's internal political situation and economy, Hong Kong's economic and political future, and U.S. businesses who have substantial economic investments in the region. In addition, Members will have to weigh the importance that the United States has traditionally placed on human rights and proliferation issues as foreign policy goals, and will have to decide on the extent to which renewing, removing, or conditioning China's MFN status may further these U.S. goals in China.

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## **CHINA-U.S. RELATIONS AND MOST FAVORED-NATION STATUS: ISSUES AND OPTIONS FOR CONGRESS**

### **INTRODUCTION**

Debate on the President's annual June request to extend most-favored-nation (MFN) status to China is more controversial in 1991 than at any time since China first received this trade status in 1980. Many have asked why the issue should be so much more contentious this year when the same request for MFN extension received relatively less congressional scrutiny in 1990 and negligible attention in 1989, immediately following the violent Tiananmen Square crackdown.

Controversy is more heated this year in major part because of the U.S. perception that, despite ongoing U.S. sanctions, post-Tiananmen authorities in Beijing have made little progress on human rights and few concessions on other major policy issues. Broader policy issues and trends are also fueling the 1991 debate. First, the nature of the American political process provides a built-in tension between the Legislative and Executive Branches over the conduct of foreign policy, and this tension has become particularly acute on questions involving the conduct of U.S. China policy. More specifically, the Executive Branch has dominated U.S. policy decisions on China for several years and has pre-empted many congressional initiatives, so that the debate on MFN this year is seen as an important opportunity for Congress to influence the direction of U.S. policy decisions. Finally, changing global trends have altered the original U.S. policy calculus concerning the strategic importance of U.S.-China relations, allowing other contentious policy issues to figure more importantly in the crafting of U.S. policy toward China.

In this contentious U.S. political setting, specific congressional concerns about issues in U.S.-China policy are now being addressed through debate on the extension of China's MFN trade status. In considering the MFN question, Members will have to make specific decisions on the political and economic consequences of withdrawing or conditioning China's MFN status, including the consequences for: U.S.-China relations; China's internal political situation and economy; Hong Kong's economic and political future; and U.S. businesses that have substantial economic investments in China and Hong Kong. Finally, Members will have to weigh the importance that the United States has traditionally placed on human rights and non-proliferation issues as foreign policy goals, and will have to decide on the extent to which renewing, removing, or conditioning China's MFN status may further these U.S. goals in China.

## BACKGROUND AND ANALYSIS

### CURRENT ISSUES IN U.S.-CHINA RELATIONS

After growing progressively closer for over a decade, U.S.-China relations have faced uncertain prospects since China's 1989 Tiananmen Square crackdown. On the positive side, China's decisions throughout 1990 to support United Nations resolutions on the Persian Gulf crisis and U.S. overtures on the conflict in Cambodia appear to have supported U.S. international security goals. And some domestic developments in China, such as the promotion of reform-minded officials to higher office and the continuing autonomy of coastal economic zones, seem to indicate that hardliners in the central government lack sufficient support for their more conservative and oppressive national agenda.

In spite of these positive developments, ongoing U.S. revulsion over the violence of the Tiananmen crackdown and broader global trends have combined to increase tensions in U.S.-China relations and within U.S. policy circles over the direction of U.S. China policy. Economic and political troubles in the Soviet Union and the collapse of communist regimes in Eastern Europe have changed the original U.S. policy calculus that close relations with China were essential to offset Soviet Bloc strength. Compounding this, China's harsh military crackdown against peaceful Tiananmen demonstrators not only has made elderly Chinese leaders appear out of step with the progressive reform sweeping much of the communist world, it also has undermined the accomplishments of China's reform decade and raised the profile of other long-standing contentious issues. The controversy of this year's MFN debate has been shaped partly by renewed U.S. attention to these issues.

#### Issues Involving Human Rights Abuses

##### *Arrests and Trials of Political Dissidents*

Since 1989, elderly Chinese leaders who remain in control behind the scenes have often resorted to repression. This has frustrated and outraged many Americans who had come to view China's policies since 1979 as among the most enlightened in the communist world. In the Tiananmen aftermath, Chinese authorities are alleged to have arrested and detained, often without an official charge, thousands who had participated in or sympathized with the democracy movement. Although the Chinese government recently accounted for approximately 1700 people arrested in the city of Beijing since the crackdown, the names of these people were not disclosed and the number arrested nationwide remains unknown.

In January and February, 1991, the Chinese government began holding trials for a number of prominent students and intellectuals who had taken part in the demonstrations. Although these trials were described as "public" by Chinese authorities, western journalists and American Embassy officers were not permitted to attend. According to Amnesty International, the sentences

imposed ranged from two years to life imprisonment.<sup>1</sup> The United States expressed disappointment over the convictions on the grounds that those sentenced were only peacefully expressing their political views. If so, the convictions, according to a U.S. Government spokesperson, violate China's commitments under the U.N. Universal Declaration of Human Rights.

Apart from arresting and imprisoning Tiananmen demonstrators, the current regime in Beijing has also been criticized for violating human rights in Tibet, persecuting people for practicing their religious beliefs, permitting lengthy administrative detention of people without charge, and failing to protect prisoners against torture and ill-treatment by interrogators.<sup>2</sup>

### ***Export of Products Made with Forced Labor***

The requirement that prisoners work is perhaps the central feature of the Chinese prison system and has been since the early years of the People's Republic of China. Chinese laws specifically state the importance of "reform through labor," and Chinese leaders continue to believe that it is an essential and proven component of the rehabilitation process.<sup>3</sup>

From the standpoint of U.S. policy, a key issue is the extent to which Chinese prison labor may be used to produce products for export to the U.S. market. The import of convict-made products is prohibited under U.S. law.<sup>4</sup> Although information on the extent to which this occurs is sketchy, allegations that it does occur have increased markedly since the Tiananmen Square crackdown. The possibility that imprisoned student demonstrators may be part of this captive work force has made the issue even more emotional for many Americans.

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<sup>1</sup>For details, see Amnesty International's summary report, *The People's Republic of China: Trials and punishments since 1989*, April, 1991, AI Index: ASA 17/34/91.

<sup>2</sup>These and other abuses were alleged in testimony on June 13, 1991, by Amnesty International USA before the Senate Foreign Relations Committee's Subcommittee on East Asian and Pacific Affairs.

<sup>3</sup>For further details on reform through labor, see Kerry Dumbaugh, *Overview and Assessment of Issues Concerning Use of Forced Labor*, CRS General Distribution Memorandum, November 8, 1990 (reprinted in *Congressional Record*, May 16, 1991, pp. S 5994-5996); Tao-tai Hsia and Wendy Zeldin, *Forced Labor in the People's Republic of China* (Report to Congress LL90-27), Far Eastern Law Division, Library of Congress, April, 1990. Also, a selected bibliography of forced labor in China is printed in the *Congressional Record* of June 25, 1991, p. S 8611.

<sup>4</sup>The import of products made with convict labor is prohibited by U.S. civil law under Section 53 of the McKinley Tariff Act of 1890, 19 U.S.C., section 1307, and by U.S. criminal law under 18 U.S.C., section 1761 and 1762.

Chinese statements on the forced labor issue appear somewhat contradictory. Some official Chinese publications appear to advocate developing an international market for prison-made products, and boast of successful export programs by some reform labor camps.<sup>6</sup> But according to a May, 1991, publication by the Chinese Embassy in Washington, "The Chinese Government does not permit any export of products produced by convict labor in its reform-through-labor program....Prisons and affiliated factories are not authorized to engage in foreign trade."<sup>6</sup> During the same month, the Chinese government was reported to have agreed to stop exporting prison-made products to the United States.<sup>7</sup> The U.S. Customs Service now for the first time is investigating several allegations of imports of Chinese prison-made products.

## Issues Involving Proliferation

### *PRC Arms Sales*

Ever since China sold Silkworm missiles to Iran and Iraq and the CSS-2 missile to Saudi Arabia in the mid-1980s, charges have periodically arisen that China continues to sell short- and intermediate-range ballistic missiles to unstable Middle East and South Asian countries. In late March and April, 1991, Western news stories began to surface alleging that China had sold M-11 missiles to Pakistan and was negotiating to sell M-9 missiles to Syria.<sup>8</sup> Both missiles

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<sup>6</sup>A commentary in the *Asian Wall St. Journal Weekly*, May 13, 1991, p. 12, cited and quoted from the following Chinese sources: Ding Banghua of the Labor Reform Bureau, Jiangsu Province, *Thoughts on developing a foreign-oriented economy by labor reform enterprises*, No. 1, 1989; Qin Guishan, The New Life Cotton Cloth Mill of Nantong County, Jiangsu Province, *How our factory has developed a foreign-oriented economy*, No. 3, 1990; He Liang, cadet of the Central Cadre College for the Administration of Labor Reform and Labor Re-education, Hebei Province, *The path is under our feet*, No. 2, 1990; and Wu Wingliu, The Reform Through Labor Police Academy of Sichuan Province, *Keep an eye on the market and breathe life into the reform through labor economy*, No. 2, 1989. A list of convict-made products thought to be exported is printed in the *Congressional Record* of June 25, 1991, p. S 8610.

<sup>6</sup>*Facts about some China-related issues of concern to the American public*, The Embassy of the People's Republic of China, May, 1991, p. 12.

<sup>7</sup>Reported in the *New York Times*, May 9, 1991, p. A8, and referred to during testimony by Deputy Secretary of State Lawrence Eagleburger before the House Foreign Affairs Committee on June 26, 1991.

<sup>8</sup>Recent reports about missile sales to Pakistan and Syria have appeared in the *Washington Post* of April 6, 1991, April 11, 1991, and June 13, 1991; *Time* magazine of April 22, 1991; and *The Christian Science Monitor* of March 29, 1991, among others. Some accounts cited the U.S. intelligence community, including a secret CIA briefing to Members of Congress, as a source for the allegations.



are thought to be capable of carrying nuclear warheads. Of equal concern are allegations that the range of these missiles may violate the thresholds set by the Missile Technology Control Regime (MTCR), whose parameters China has stated it will honor. In addition, Chinese missile sales in the Middle East would be in direct conflict with stated U.S. security goals and peace overtures in the region.

According to U.S. military analysts, the range of the M-11 missile is estimated at approximately 180 miles, or barely below the MTCR threshold, while the M-9 missile's range, an estimated 375 miles, is well beyond this threshold. Allegations about M-9 sales have been of particular concern to the United States, and U.S. officials have periodically pressed for and reportedly received assurances that China would not sell the M-9 to Syria. Reportedly, a primary reason for National Security Advisor Brent Scowcroft's controversial December 1989 visit to Beijing was to confirm these Chinese assurances.

In a recent public statement, China's Ambassador to the United States, Zhu Qizhen, stated that China had not sold the M-9 missile to Syria.<sup>9</sup> The Ambassador was less definitive about China's future intentions on the M-9 sale. Official Chinese statements on the sale of M-11 missiles to Pakistan are somewhat ambiguous. In April, a Chinese Foreign Ministry spokesman claimed the report that China had sold intermediate-range missiles to Pakistan was totally groundless.<sup>10</sup> But in his public statement of June 27, 1991, Ambassador Zhu confirmed the M-11 sale, saying "...we have sold some conventional weapons to Pakistan, including a tiny amount of short-range tactical missiles. I think here you call it M-11."<sup>11</sup>

### ***Nuclear Assistance to Middle East and South Asian Countries***

Reports continue to circulate that China may be assisting other countries in developing nuclear weapons capabilities. Among the most long-standing of these charges are allegations that China has assisted Pakistan's nuclear development program. Reports of China's nuclear ties with Pakistan figured prominently in the 1985 congressional debate over implementation of the Sino-American nuclear cooperation agreement. More recent reports allege that China is assisting Algeria in a nuclear development program whose purpose may be to produce nuclear weapons, and that China may be assisting Iran in a nuclear

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<sup>9</sup>The Ambassador made this statement in response to a reporter's question after he addressed an audience at The National Press Club. Transcript in *The Reuters Transcript Report*, June 27, 1991.

<sup>10</sup>Reported in *Zhongguo Xinwen She* on April 25, 1991. (JPRS-TAC-91-011, May 8, 1991)

<sup>11</sup>From the Ambassador's National Press Club address.

development program.<sup>12</sup> A key point of concern is the reliability of China's assurances that it does not approve of nuclear proliferation. China has refused to sign the Nuclear Non-Proliferation Treaty (NPT), and has periodically been charged with negotiating nuclear cooperation agreements in secret without formally acknowledging the role or authority of the International Atomic Energy Agency (IAEA).

Chinese officials have strongly insisted that China's nuclear cooperation with Algeria is for peaceful purposes only, and that any allegations of nuclear weapons assistance are "totally groundless."<sup>13</sup> Algerian officials have also insisted the cooperation is peaceful, and have claimed that the nuclear reactor in question will be opened for international inspection when completed in several years. Some U.S. experts, however, question the project's peaceful use because of its isolated location, the absence of electric power grid connections, and the presence nearby of an anti-aircraft missile battery.<sup>14</sup>

## Issues Involving Trade Policy

### *China's U.S. Trade Surplus*

China's rapidly growing trade surplus with the United States is a controversial issue of more recent vintage. According to the U.S. Department of Commerce, China's U.S. trade surplus was approximately \$6 billion in 1989, the year of the Tiananmen Square crackdown. One year later, in 1990, it had grown to \$10.4 billion. This surplus was surpassed only by the trade surpluses of Japan and Taiwan in 1990. Furthermore, China's trade surplus is projected to grow to \$15 billion in 1991. Some U.S. observers have attributed the surplus to deliberately predatory trade practices, including product dumping, currency devaluation, breaching of quotas on textile exports, and use of cheap convict labor in export-oriented industries. They also claim that U.S. exports to China have dropped sharply over the last few years because China has increasingly restricted foreign access to its markets.<sup>15</sup>

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<sup>12</sup>Periodic reports on China's nuclear assistance to Algeria and Iran have surfaced in western news accounts such as *Far Eastern Economic Review*, in trade journals such as *Nucleonics Week*, and in foreign news accounts such as Cairo's *Al-Ahram* newspaper.

<sup>13</sup>The unnamed official from China's Embassy in Algiers was quoted in *Xinhua* of April 14, 1991. (FBIS, CHI-91-073, April 16, 1991)

<sup>14</sup>U.S. intelligence sources are cited in *The Washington Post*, May 2, 1991, p. A36.

<sup>15</sup>American sales to China dropped from \$5.8 billion in 1989 to \$4.8 billion in 1990. In June, 1991, Assistant U.S. Trade Representative Joseph Massey went to Beijing to press U.S. concerns about market access.

Friction over the trade imbalance has been further increased by the differing ways in which China and the United States account for China's "reexports" through Hong Kong. China has steadfastly refused to include its exports through Hong Kong in its own trade statistics. Chinese officials at times have accused U.S. officials of being "unfair and unreasonable" in attributing such trade to China's account. The discrepancy over trade accounting is so acute that China at one time claimed to have a \$1.5 billion trade **deficit** with the United States.<sup>16</sup>

Chinese officials appear aware that their U.S. trade imbalance is a significant problem for bilateral relations. In October, 1990, and again in May, 1991, China sent its first two buying missions to the United States in an effort to increase the country's U.S. purchases. Chinese authorities claim that these two missions combined have signed approximately \$2 billion worth of contracts for the purchase of U.S. goods. Some, however, allege that the buying missions were politically motivated, and timed to increase the cost to the United States of withdrawing China's MFN status.

### ***Intellectual Property Rights***

U.S. concern also has grown about China's infringements of copyrights and other intellectual property rights. Pirated copies of U.S. books are reported to be widely available from Chinese publishers. Protected trademarks, such as Walt Disney characters or the brand names of well-known U.S. products, often appear illegally on Chinese merchandise. Some American software manufacturers claim that pirated software in China may cost U.S. industry as much as \$400 million annually.

Chinese leaders have taken recent steps to address the intellectual property rights issue. China's first copyright law took effect on June 1, 1991, and new Regulations on the Protection of Computer Software will become effective on October 1, 1991. Nevertheless, based on past experience with Chinese trademark laws and regulations, some U.S. critics have questioned China's willingness leaders to adhere to international standards and its ability to adequately enforce the laws which it adopts. Critics also point out that China's trademark enforcement offices are seriously understaffed, raising questions about their ability adequately to police trademark violations.

The Bush Administration has acted recently to address these and other trade issues in U.S.-China relations. In April, the Administration designated China under Special 301 provisions for violations of intellectual property rights. Under these provisions, the U.S. Trade Representative must negotiate with China to try and resolve the issue. In a separate action, U.S. Customs officials, charging that China illegally exported more than \$50 million in textiles through third countries in 1990, earlier this year began applying the overshipments

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<sup>16</sup>This statement was made in March, 1991, by the deputy bureau chief of U.S.-China trade for China's Ministry of Foreign Economic Relations and Trade (MOFERT).

against China's 1991 textile quotas. Finally, Assistant U.S. Trade Representative Joseph Massey visited Beijing in June, 1991, to press U.S. concerns about market access, intellectual property rights, and other trade issues.

### **Larger U.S. Policy Dimensions in the Debate on China's MFN Status**

As important as the contentious issues described above are to current U.S.-China tensions, they are only one set of factors providing the momentum for this year's debate on MFN status. The vehemence of the MFN debate is also reflective of an ongoing U.S. policy struggle over the respective roles that the Legislative and Executive Branches have in setting the direction for U.S. foreign policy. The 1991 debate on MFN status has become a means for carrying out this larger struggle.

In examining some of the underlying sources of tension between Congress and the Administration on China policy, it is first important to keep in mind the substantially different but constitutionally equal roles that each branch has over U.S. foreign policy decisions. The Executive Branch has sweeping jurisdiction over foreign policy issues. As the Chief Executive and Commander-in-Chief of the Armed Forces, the President retains broad powers to respond unilaterally, often by executive order, to unfolding international events. Those decisions can quickly be implemented by the various executive agencies and departments of the Executive Branch, and can just as quickly be reversed. President Bush has consistently used his comprehensive constitutional powers on issues involving China, and has claimed that the Executive Branch is well-positioned to move swiftly and authoritatively on questions involving China.

Congress, on the other hand, has more clearly defined jurisdiction over foreign policy issues. Moreover, in considering foreign policy measures, Congress' mandate is to balance broader U.S. foreign policy goals with the domestic and international concerns of the constituencies of individual Members. In general, Congress accommodates the President's constitutional prerogative to propose -- and, in foreign policy, to take the lead -- provided that Congress retains its right to oppose. In many cases, congressional decisions allow for varying degrees of flexibility, providing discretion to the President to extend or deny benefits to other countries, or to waive, under specified conditions, restrictions Congress has elected to impose.

Operating under these very different institutional mandates, Congress and the Administration have clashed repeatedly on the conduct of U.S. China policy since Tiananmen Square. It is not that each holds different views over long-term U.S. policy goals; on the contrary, there remains widespread sentiment throughout the U.S. policy community that close relations with a secure, modernizing, stable, and reforming China will best serve U.S. interests. Rather, views have come to differ, sometimes sharply, over the means for achieving these goals and the role that Congress should play in shaping them.

Many in Congress believe that the Executive Branch has prematurely given away important U.S. leverage over China without demanding or receiving concessions in return. But congressional efforts to find legislative ways to apply U.S. leverage without jeopardizing U.S. interests have often been pre-empted or overturned by President Bush, who is confident in his own judgments on China questions and who has been bolstered by his successful prosecution of the Persian Gulf War. Congressional attempts to influence the policy process have been frustrated by the President's overwhelming ability to successfully dominate U.S. policy decisions on China.

Instead of serving as an equal partner in the policy process, the Legislative Branch has often found itself the object of the Administration's policy actions on China. In addition, the President is seen as pre-empting many congressional initiatives in his intent to retain the Executive Branch's control of China policy decisions. For example, Congress saw its enactment of 1989 legislation to protect Chinese students vetoed by the President, only to have similar measures enacted later by executive order. Congress has also been an observer to the President's selective enforcement of his own firmly stated sanctions against China. For instance, having announced the prohibition of U.S. arms sales to China on June 5, 1989, the Administration waived the prohibition in July, 1989, for the sale of Boeing jets, and again in December, 1989, for the export of U.S. communications satellites to China. In the latter case, the President was also waiving restrictions which Congress had imposed on the satellite exports in the State Department Authorization bill (P.L. 101-246).

Given the dominance of the Executive Branch on China questions, the opportunity for congressional action on the President's 1991 request for extending China's MFN status appears to be serving a dual purpose: first, it is an important opportunity to expand congressional influence over U.S. China policy; and second, it provides a means to air congressional disagreements over specific Administration decisions involving China.

For many Members, a significant factor in deciding whether to extend MFN status for China will be their judgment of how that vote will affect the sensitivity of the Executive Branch to congressional concerns about the entire range of U.S.-China relations. In addition, Members will have to consider the political and economic consequences of withdrawing or conditioning China's MFN status, including the consequences for: U.S.-China relations, China's internal political situation and economy, Hong Kong's economic and political future, and U.S. businesses who have substantial economic investments in the region. In addition, Members will have to weigh the importance that the United States has traditionally placed on human rights and proliferation issues as foreign policy goals, and will have to decide on the extent to which renewing, removing, or conditioning China's MFN status may further these U.S. goals in China. (For the status of legislation, see Pregelj, CRS Issue Brief #89119.) The following section discusses some congressional options.

## **China's Current Eligibility for MFN Status**

China's eligibility for MFN status currently is subject only to freedom-of-emigration restrictions imposed by the Jackson-Vanik amendment to the Trade Act of 1974. This amendment permits U.S. authorities to grant MFN status to a "nonmarket economy" providing that the country in question does not have restrictive emigration procedures (such as outright denial of emigration, or imposition of stiff taxes or other onerous requirements on those seeking to emigrate). Under U.S. law, the President may waive the requirement of full compliance with Jackson-Vanik.<sup>17</sup> His authority to do so expires annually on July 3, and he must make his request for an extension of that waiver authority not less than thirty days prior to this expiration date, or by June 3. Congress has sixty days from the July 3 expiration date to deny the President's request, or the waiver authority is renewed automatically for another year. (For further discussion of these procedures for China's MFN status, see CRS Issue Brief 89119.)

## **Options for Congress on MFN for China**

### ***Supporting Unconditional Renewal of MFN***

Congress may support the President's request for unconditional renewal of China's MFN status by voting against a joint resolution of disapproval, and by voting to sustain a presidential veto should a joint resolution of disapproval pass both houses. Members may also support the President's position by voting against other legislation, separate from the joint resolution but likely to be considered simultaneously, which would amend U.S. law by establishing further conditions for China's future MFN eligibility.

### ***Supporting Arguments***

The case for extending China's MFN status unconditionally is based on a variety of economic and political arguments. The Administration contends that MFN is a trade tool which should not be used for political ends. Administration officials state that the United States should handle human rights, proliferation, and arms sale issues on an individual basis and through other specifically-targeted means.

Supporters of unconditional extension defend their position in part on human rights grounds. China's MFN status over the past decade is widely recognized to have helped bring about political liberalization, and has promoted better conditions for human rights in China by opening China to progressive change from the outside world. Renewing China's MFN status will strengthen the hand of Chinese reformers who support further liberalization. Withdrawing

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<sup>17</sup>U.S. Presidents have waived Jackson-Vanik for China every year since 1980.

it, on the other hand, would isolate China and permit hardline, xenophobic elements to crack down further on political dissent.

Renewing China's MFN status also would permit the United States to maintain contacts with and leverage over China. Over the past two years, this U.S. strategy has helped prompt China to release 1,000 political prisoners (including noted dissident Fang Lizhi), to promise to prevent export of products made with prison labor, to continue to permit travel by Chinese students to the United States, and to begin a high-level U.S.-China dialogue on human rights issues.<sup>18</sup>

Supporters of unconditional extension also argue the case on other policy grounds. According to a June 1991, State Department letter, the United States now has China "moving in the right direction" on missile and nuclear proliferation issues.<sup>19</sup> Among other things, China has acknowledged "in principle, the need to act responsibly on military sales," and has expressed willingness to adhere to international practice on IAEA safeguards concerning nuclear facilities. In recent talks with Under Secretary of State Reginald Bartholomew, Chinese authorities agreed to seriously consider signing the Nuclear Non-Proliferation Treaty (NPT) and the Missile Technology Control Regime (MTCR) agreement, neither of which China has formally signed. In addition, China has shown willingness to cooperate on important regional and global issues of interest to the United States, such as the Persian Gulf crisis, the conflict in Cambodia, and tensions between North and South Korea. The unconditional extension of China's MFN status is essential to assure continued Chinese cooperation on these and other important issues.

Proponents of unconditional extension also cite the harsh economic consequences MFN's withdrawal would have for China, Hong Kong, and many U.S. businesses operating in China and Hong Kong. Loss of MFN status would result in substantial tariff increases on the majority of China's exports to the United States. Most of these exports come from Special Economic Zones (SEZs) in China's southern coastal areas, which have operated for years in a greatly liberalized, free-market-type of atmosphere, and which are widely thought to be at odds with the leadership in Beijing over many policy issues. The loss of MFN would do far more economic damage to these entrepreneurs and reform advocates -- the very people the United States wishes to cultivate -- than to China's leaders or to central government revenues.

Moreover, loss of China's MFN would hurt many U.S. and foreign businesses who have invested in the SEZs because of their low production costs and liberalized economic policies. China would also probably retaliate against

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<sup>18</sup>In December, 1990, Assistant Secretary of State for human rights, Richard Schifter, reportedly presented Chinese authorities in Beijing with a list of 150 political prisoners and asked for their release.

<sup>19</sup>The letter from Secretary of State James Baker is reprinted in the *Congressional Record* of June 24, 1991, p. S 8483 - 8484.

losing MFN by substantially reducing its purchases from the United States, particularly of agricultural goods and commodities.<sup>20</sup> Proponents of unconditional extension also point out that many U.S. allies, including Japan, the United Kingdom, Germany, France, Belgium, Italy, Spain, Denmark, and Canada, treat China as a developing country, granting it even lower tariff rates than those assessed under MFN.<sup>21</sup>

The Administration contends that American interests would be better served by handling U.S. differences with China on human rights, proliferation, and other contentious issues through measures more specifically targeted than is the blunt instrument of withdrawing MFN tariff status. Administration officials point to steps that the President has already taken in this direction, including recent actions to deny licenses for the export of components for launch of a Chinese satellite, withhold licenses for export of high-speed computers, and designate China under Special 301 provisions for violations of U.S. intellectual property rights. Proponents of unconditional extension also claim that separate concerns in U.S.-China relations are addressed in legislation already introduced in the 102nd Congress. Among others, bills have been introduced that would strengthen penalties for importing products made with forced labor, and create more effective domestic and international controls on nuclear proliferation.

### ***Denying or Conditioning China's MFN Status***

Congress may deny the extension of MFN for China by voting in favor of a joint resolution of disapproval of the President's request, and by voting to override a presidential veto should a joint resolution of disapproval pass both houses and be vetoed by the President.

Congress also may place conditions or other restrictions on China's receipt of MFN status by voting in favor of separate legislation amending the Trade Act of 1974 to require further conditions on China's MFN eligibility, and by voting to override a possible presidential veto should such legislation pass both houses. Legislation on conditionality may be considered at any time, irrespective of time deadlines for a joint resolution of disapproval. More likely, the two measures would be considered simultaneously. Unlike the joint resolution of disapproval, legislation to condition MFN may be subject to floor amendment. The President has stated his opposition to any bill imposing new conditions.

### ***Supporting Arguments for Denial***

Proponents of outright denial claim that MFN is a privilege, not a right, and that China no longer deserves this privilege because of its abandonment of

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<sup>20</sup>See Susan Epstein, *China's most-favored-nation status: U.S. wheat exports*. CRS Report 91-447 ENR, May 29, 1991.

<sup>21</sup>These rates are comparable to the U.S. generalized system of preference (GSP) rates. Under GSP rates, a country's exports are subject to negligible tariffs, or in many cases, to no tariffs at all.



more enlightened reform policies and its egregious violations of human rights. China's post-Tiananmen restrictions on free emigration -- in particular, its fees and other restrictions on Chinese students who wish to study overseas -- are new and specific violations of the Jackson-Vanik restriction requiring unrestricted emigration policies. In addition, proponents argue that Beijing's intransigence on emigration and other policy issues in the face of two years of U.S. and international pressure demonstrates that stronger measures are needed to foster greater policy improvements. Given China's great need to export in order to gain critical hard currency, denial of MFN status is the strongest measure available to U.S. policymakers, and the most effective way for Congress to pressure the President for a firmer policy approach.

Proponents of denial also state that while reform-minded entrepreneurs in China may be injured economically over the short term by the loss of MFN, the longer term effect would be to increase their already high level of disaffection with Beijing's elderly leaders. Contrary to Administration arguments that an isolated China would not be in U.S. or Chinese interests, proponents argue that precedent indicates otherwise. The economic isolation which lack of MFN status brought to the Soviet Union and Eastern Europe were contributing factors to their near economic collapse and their subsequent wholesale reform efforts; loss of MFN could serve the same function in China. Moreover, China should not get more favorable treatment than the Soviet Union, which has moved decisively in the last two years toward free political expression and emigration, and which still does not receive MFN status from the United States.

### ***Supporting Arguments for Conditionality***

The main thrust of this year's congressional debate on MFN for China centers around the question of establishing further conditions for China's MFN eligibility. Some conditions being discussed are considered so restrictive, specific, or harsh that they would be tantamount to a denial. Such restrictions include: independence for Tibet, acknowledgement of Taiwan's right of self-determination, release either of all political prisoners or of all prisoners arrested in conjunction with Tiananmen Square demonstrations, punishment of those responsible for the Tiananmen Square crackdown, or national adoption of democratic principles and public election of officials. Legislation containing such conditions would certainly bring a presidential veto.

But many proponents of conditionality support an approach designed not to deny MFN status, but to set more specific policy guidelines and requirements for U.S. China policy. These proponents share many of the concerns of those favoring strict conditionality or outright denial, and believe that proposing new conditions which China would be able to meet would provide an important incentive for Chinese leaders to make significant policy changes. They defend their position on a variety of policy grounds.

Proponents of conditionality see current U.S. policy toward China as having failed, either to persuade elderly Chinese leaders to become more conscious of human rights or to pressure China to adhere to internationally-accepted controls

on nuclear and missile sales policies. They also see the President as having been too willing to acquiesce to the demands of China's current discredited leadership, and too hesitant to apply pressure on the post-Tiananmen regime on issues of concern to the United States. Further conditions on China's MFN status would serve as negotiating levers for the President to use to influence Chinese leaders. Conditions which would have to be annually voted on by Congress would also increase congressional oversight over Administration actions and over important aspects of U.S. China policy.

Advocates of conditionality also argue that the United States owes support to democracy activists, reform advocates, and others in China who disagree with the harsh policies of post-Tiananmen leaders. Unconditional extension of MFN would appear to be a validation of central government policies, and would send the wrong message to those groups in China. Such a message could damage U.S. relations with these groups once China's elderly leaders pass on.

Proponents of conditionality also point out that existing law permitting annual extension of MFN to communist countries already contains the freedom-of-emigration conditions of the Jackson-Vanik provision. Furthermore, Jackson-Vanik was enacted with a specific country, the Soviet Union, as a target -- a fact ignored by Beijing leaders who protest any conditions proposed specifically for China.

## APPENDIX

### CURRENT U.S. SANCTIONS AGAINST CHINA

Several days after the Tiananmen Square crackdown, the United States began imposing a series of economic and other sanctions against China, both in protest to the crackdown and in an effort to influence Chinese leaders to pursue more enlightened policies. These sanctions were both specific and discrete, and were significant in two respects. First, although they included some economic measures they did not include changes in China's MFN trading status. Second, the extent to and manner in which they were imposed illustrated growing tension between Congress and the Executive Branch over how best to craft U.S. policy toward China. The President appears to have applied stated Executive Branch sanctions selectively, while waiving or vetoing many congressional attempts to strengthen sanctions or impose others.

### CONTINUING U.S. SANCTIONS AGAINST CHINA:

#### 1) **Suspension of all government-to-government military sales and commercial exports of weapons**

Presidential action, June 5, 1989. On July 7, 1989, the State Department granted a waiver of the suspension of military sales for the sale of 4 Boeing 757-200 commercial jets with navigation systems that could be converted to military use. In addition, on December 19, 1989, the President, citing "national interest" reasons, waived prohibitions on export licenses for three U.S. communications satellites to be launched on Chinese launch vehicles. Previously, Administration officials had stated that the licenses would be prohibited under the sanction suspending arms sales to China. Congress had also specifically prohibited export licenses for the satellites in authorization and appropriations legislation (H.R. 1487 and H.R. 2991), Congress had also prohibited export licenses for the satellites, with the provision that the President could waive the prohibition for national interest reasons.

#### 2) **Suspension of U.S. and Chinese military exchanges and visits**

Presidential action, June 5, 1989. According to a U.S. official at the Pentagon, this sanction remains in effect for all military exchanges and visits above the "working" staff level.

#### 3) **Extension of lawful non-immigrant status until January 1, 1994 for Chinese in the United States**

Presidential action, Executive Order #12711. Although this was eventually accomplished by executive order, Congress initially enacted legislation, H.R. 2712, the Emergency Chinese Immigration Relief Act of 1989. The bill would have made it possible for Chinese students in the United States to

extend their stays here for up to four years. It passed the House on July 31 and the Senate on August 4, 1989. Conference Report 101-370 was agreed to on November 20, 1989, and on November 30 the President let it be known that he would pocket veto the bill. The President maintained that the bill was unnecessary since he was ordering into practice many of the bill's provisions. On January 24, 1990, the House voted to override the President's veto of this bill by a vote of 390-25. On January 25, 1990, the Senate voted to sustain the President's veto (by a vote of 62 to override and 37 to sustain).

**4) Suspension of new Overseas Private Investment Corporation (OPIC) programs for investments in China**

Congressional action, a provision of H.R. 1487, the State Department Authorization bill, FY 1990, 1991 (P.L. 101-246). This bill contained a number of China sanctions. It passed the House on April 12 and the Senate on July 21, 1989. Conference Report 101-343 was agreed to vote on November 16, 1989, and the bill was vetoed by the President on November 21, 1989. Administration officials stated that the bill was vetoed for reasons other than the China sanctions. A revised bill (H.R. 3792) that removed the objectionable section passed the House on November 21, 1989. The Senate passed the bill by a vote of 98-0 on January 30, 1990, and it was signed into law by the President on February 16, 1990.

**5) Suspension of new Trade and Development Program (TDP) activities**

According to a TDP official, the agency has made the decision to suspend all new obligations for programs in China.

**6) Suspension of high-level exchanges between U.S. and Chinese Government officials**

Presidential action, June 20, 1989. Although this suspension officially remains in force, a number of senior U.S. officials have met with Chinese authorities both in China, Washington, and elsewhere. These officials have included: National Security Advisor Brent Scowcroft, Deputy Secretary of State Lawrence Eagleburger, Secretary of State James Baker, President George Bush, Assistant Secretary for Human Rights Richard Schifter, Under Secretary of State Reginald Bartholomew, and Assistant U.S. Trade Representative Joseph Massey, among others.

**7) Suspension of peaceful nuclear cooperation**

Congressional action under H.R. 1487, the State Department Authorization bill, FY 1990, 1991 (P.L. 101-246).

**8) Suspension of export licenses for crime control and detection equipment**

Congressional action under H.R. 1487, the State Department Authorization bill, FY 1990, 1991 (P.L. 101-246).

**9) Opposition to talks within CoCom on liberalizing controls on high-technology exports to China**

Congressional action under H.R. 1487, the State Department Authorization bill, FY 1990, 1991 (P.L. 101-246). The provision required the President to negotiate with CoCom to suspend further liberalizations.

**10) Termination of support for multilateral development loans to China expect for basic human need (BHN) projects**

Presidential action, June 20, 1989. In addition, Congress enacted legislation, H.R. 3743, Foreign Operations Appropriations (P.L. 101-167), which provided that \$115 million of the U.S. contribution to the International Development Association (IDA - part of the World Bank) could be made available after January 1, 1990, only if the President certified that: (1) the IDA had not provided loans to China since June 27, 1989, or (2) that, if such loans had been provided, they were in support the process of increasing individual freedoms and improving human rights in China. The World Bank did not provide loans to China between June 27, 1989 and January 1, 1990, and the President so certified on January 3, 1990. Shortly after this, the Bank's officials resumed loans to China. The United States has abstained on votes for non-BHN loans.

## **RECENT ADMINISTRATION ACTIONS**

Since April, 1991, the President has announced the following additional steps relating to China:

- **denial of licenses for export of components critical for the launch of a new Chinese domestic satellite** (unrelated to earlier waivers for U.S. satellites);
- **determination not seek to further satellite waivers for China until missile proliferation concerns are satisfied;**
- **determination not to license exports of high-speed computers to China under missile proliferation concerns are satisfied;**
- **denial of licenses for exports to any Chinese company found to exceed international standards in the transfer of missile equipment** (two Chinese companies have been cited under this denial);

- designation of China under Special 301 provisions for violations of U.S. intellectual property rights;
- application of alleged Chinese overshipments of textiles in 1990 to China's 1991 textile quota.